IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.Rev.Pet.No. 658 of 1999()

CRA.162/1997 of ADDL.SESSIONS COURT, KOZHIKODE
CC.688/1995 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA
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REVN. PETITIONER:

STANLY S/O LASER
ERUMAPETTY
THALAPPALLY TALUK
THRISSUR DISTRICT

BY ADV. SRI.P.K.SURESH KUMAR
SMT.M.R.SREELATHA

RESPONDENTS:
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1. THE EXCISE INSPECTOR
EXCISE RANGE OFFICE
VADAKARA

2. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM

BY PUBLIC PROSECUTOR SRI.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/02/2007THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR.J

Crl.R.P No. 658 OF 1999

Dated this the 1st day of February 2007

ORDER

The accused in C.C. No. 688/1995 on the file of the Judicial First Class Magistrate Vadakara is the revision petitioner. The revision petitioner was found guilty for an offence punishable under Section 55 (a) of the Abkari Act convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- and in default of payment of fine simple imprisonment for six months Challenging the conviction and sentence the petitioner filed Crl.Appeal 162/1997. The learned Sessions Judge concurred with the findings of the Magistrate and dismissed the Crl.Appeal. Challenging those concurrent findings of the court below the revision petitioner filed this Crl.R.P .

2. The allegation against the petitioner was that he was found to be in possession of 15 bottles of Indian made foreign liquor containing 375 M.L each in the bus at about 7.05 A.M on 9-7-1999. According to the prosecution the petitioner was keeping the bottles in a bag and was travelling in a State Carriage Bus bearing Regn. No. KLL 0876. The petitioner was arrested and the Indian made foreign liquor seized . When the petitioner appeared before the learned Magistrate copies of the relevant documents were furnished to him. Charge under Section 55 (a) was

framed. Charge was read over and explained to the petitioner. He understood the same and pleaded not guilty. PWs1 to PW5 were examined Ext.P1 and P2 were proved and marked. M.Os 1 &2 identified. When the prosecution evidence was over, the petitioner was questioned under Section 313 of Cr.P.C. He denied all the allegations levelled against him, but did not adduce any evidence. The learned Magistrate accepted the prosecution case finding that the petitioner is guilty convicted and sentenced him as above. The conviction was confirmed by the Sessions Judge .

3. The learned counsel appearing for the petitioner has argued before me that even accepting the entire prosecution case as such no offence under Section 55 (a) is made out in this case. It is argued that at the best it can be said there was violation of rule in relation to legal liquor permitted to be transacted within the State and hence conviction of the petitioner for offence under Section 55 (a) is illegal.

4. The definite prosecution case was that the petitioner was travelling in a stage carriage bus with a bag which contained 5.625 liters of Indian Made Foreign Liquor . It is not disputed that the law permits a person to possess a particular quantity of Indian Made Foreign Liquor. So even accepting the case of prosecution as such, it is a case in which the

petitioner was carrying the Indian made foreign liquor in excess of the quantity permitted. In **Sabu Vs State of Kerala 2003 (2) KLT 173** it was held that if a person is carrying Indian made foreign liquor in excess of the quantity permitted no offence under Section 55 will lie It was held as follows:-

> *There is no case for the prosecution that accused were transporting illicit liquor or they have illegally imported the liquor or the liquor was adulterated or they have manufactured the liquor or liquor was transported for illegal second sale. Therefore, the words, imports, exports, transports, transits or possess liquor read with heading to the section show that it is applicable to illegal liquors. Here, the liquor was purchased from the Kerala State Bewerages' Corporation for own consumption and there is no question of any illegal import or transporting or possessing illicit liquor. The only offence is that they were in possession of excess quantity of liquor permissible under law, though purchased legally from the Kerala State Bewerages Corporation*

5. So even if the entire the prosecution case is accepted as such , it only reveals an offence punishable under Section 63 of the Abkari Act The maximum sentence that can be awarded on the date on which the offence was committed was a fine of Rs.2,000/-. Considering the entire facts and circumstances I am of the view that a fine of Rs. 1,000/- is sufficient to meet the interests of justice.

In the result this Crl.R.P is allowed in part. The findings of the court below that the petitioner is guilty of an offence punishable under Section 55 (a) of the Abkari Act are hereby set aside and the conviction is altered to one under section 63 of the Abkari Act. The petitioner is sentenced to pay a fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment for one month. Petitioner is given two months time from today to pay the fine amount also.

K.PADMANABHAN NAIR,JUDGE

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